D.B. CENTRAL EXCISE APPEAL NO.57/2006
UOI **Vs.** M/s Tiwari Processors Ltd. & Anr.

Date of judgment : 16th Nov., 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Vineet Kumar Mathur for the appellant.

Heard learned counsel for the appellant.

This appeal is directed against the order dated 16.6.2005 of the Customs, Excise and Service Tax Appellate Tribunal, New Delhi by which the penalty levied against the respondent-assessee under Section 173Q of the Central Excise Rules, 1944 has been set aside.

According to the case of Revenue when the premises of the assessee were visited on 10th Sept., 1994 and on 12th September, 1994 a number of lumps measuring 16,452.70 meters of finished fabric was found in excess, than what was recorded in the stock

register. Penalty under Section 173Q levied considering that excess stock could not be explained satisfactorily by the respondent. The principal material about excess stock found at the premises of assessee on the aforesaid two visits was primarily consisted of the statement of one Shri Amrit Kumar Nirmal, Accountant an employee of the respondent assessee. Otherwise as on the date when the factory premises were visited by the authorities i.e. on 10th Sept., 1994 and 12th Sept., 1994, no statement of any person present at the premises was recorded. The statement of Amrit Lal Nirmal was recorded on 17th Sept., 1994 i.e. after 5 days of the visit.

While levy of penalty was affirmed by the Commissioner (Appeals), the Tribunal has set aside it by accepting the explanation furnished by the partners of the respondent-firm considering that since no contemporaneous record was made on the visit on 10th Sept., 1994 and 12th Sept., 1994 the subsequently prepared charts in the office cannot be reliable evidence of the facts stated therein. The only evidence on record was of Shri Amrit Kumar Nirmal that on the date the

officers visited the premises of assessee there was excess stock in the godown. However, after perusing the statement of Amrit Kumar Nirmal, the Tribunal found that the explanation was required to be secured from the directors about the stock position on the date of visit and when no statement of the Directors were secured, therefore, no penalty was levied.

Since the entire matter was based on the statement of Shri Amrit Lal Nirmal, we directed by order dated 17.10.2006 to place on record the statement of Shri Armit Kumar recorded on 17.9.1994 as the same was relied on by the respondents as admission of valuation of provisions relating to stock.

Having perused the statement of Amrit Kumar Nirmal, it is apparent that he only stated what has happened on 10th and 12th September, 1994 but he categorically stated that since his Director will not present, he can alone explain the position about the stock position found on the site on 12.9.1994. Therefore, nothing turns on the statement of Amrit Kumar Nirmal and what really was required to be

considered is the explanation submitted by the Director about the stock position on 12.9.1994. Since the Tribunal accepted that explanation submitted by Director about the stock position on the date of authorities' visit on the premises, the finding of the Tribunal is a finding of fact on the material before it and, does not give rise to any question of law.

The appeal, therefore, fails and is hereby dismissed in limine.

[GOPAL KRISHAN VYAS], J. [RAJESH BALIA], J.

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